



This form is to be used in conjunction with a rule review when ancillary documents are also being reviewed as part of the review process.

Ancillary documents are interpretive or policy statements that advise the public of the Department's opinions, approaches, or likely course of action. They include documents such as Excise Tax Bulletins (ETBs), Property Tax Bulletins (PTBs), and Revenue Policy Memorandums (RPMs). Ancillary documents do not have the "force of law" that a rule is given under the Administrative Procedures Act (Chapter 34.05 RCW). Court decisions, Board of Tax Appeals decisions (BTAs), and Washington Tax Decisions (WTDs) **are not** ancillary documents.

Reviewer: Mark Mullin Date Reviewed: September 12, 2001

Ancillary Document being reviewed
(provide number and title): ETA 325.08.159/221 (Tax liability of charter boat owners and charter agencies—Reporting instructions)

Date last Issued: October 20, 1967

This document is being reviewed in conjunction
with (provide WAC number and title): WAC 458-20-181 (Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington)

Purpose of the document: To provide tax-reporting information for charter boat owners and charter agencies

Is the document clearly written?

Yes	No
X	

Does the document provide accurate and useful information?

Yes	No
X	(in part)

Does the document provide information not currently in the rule?

Yes	No
X	

**Review recommendation:**

- A. Update
B. Repeal
C. Leave as is
D. Incorporate into rule and repeal

X

Briefly explain your recommendation:

This ETA contains information that appears inconsistent with the information provided in a Special Notice addressing the taxability of the charter boat industry (February 7, 1997) and the Guide For Vessel Brokers & Dealers (June 1998) (the "Vessel Guide"). The ETA explains the tax-reporting responsibilities of agents that charter in the boat owner's name, but does not distinguish these responsibilities from those of agents that charter in their own name. The ETA states that a charter agent is subject to retailing B&O and retail sales taxes on its charter rental income and service and other activities B&O tax on its commission income. However, in contrast with the Vessel Guide and the Special Notice, the ETA does not explain that the charter agent may claim a deduction from the retailing B&O tax. Instead, the ETA states that the charter agent can avoid the expense of the retailing B&O tax if the agent collects the tax from the boat owner, which can be misleading. If a charter agent collects amounts attributable to a B&O tax liability from the boat owner, those amounts are required to be included in the charter agent's gross receipts for purposes of calculating retailing B&O tax.

However, the ETA correctly advises that charter agents are personally liable for sales tax that they turn over to the boat owner when the boat owner is not registered with the Department and has not remitted the tax to the Department. This information should be incorporated into WAC 458-20-181 along with a general discussion of the tax-reporting responsibilities of the charter boat industry. There is no evidence that the misleading information noted above is causing problems, thus the ETA can be retained until the appropriate information is incorporated into the rule.

Manager Action:☐

Accepted recommendation

Date: _____

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Returned for further review

Date: _____

Comments _____